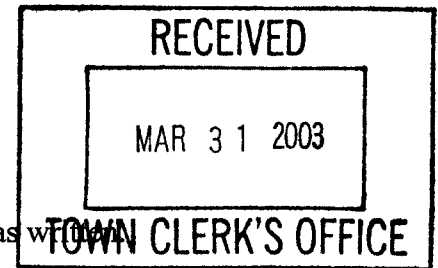




CC: BUILDING DEPT. ☐
TOWN CLERK ☐
FRAN ☐

TOWN OF NEW WINDSOR ZONING BOARD OF APPEALS

AGENDA FOR:
FEBRUARY 24, 2003



7:30 p.m. – Roll Call

Motion to accept minutes of FEBRUARY 10, 2003 meeting as written

PRELIMINARY MEETINGS:

1. **MAKAN HOMES (03-09)** – Request for 51,543 sq. ft. Min. Lot Area, 5 ft. Front Yard Setback and 10 ft. 6 inch Rear Yard Setback to construct a single-family house in an **(R-3)** zone at 200 Riley Road **(65-1-22.3)**
2. **JOHN RINALDI (03-11)** – Request for interpretation of residence as a single-family with two kitchens in an **R-4** zone at 322 Linden Avenue **(62-4-12.1)**

PUBLIC HEARINGS:

3. **PAUL & LUANN DECKER (03-06)** – Request for variance of Section 48-14 (A)(4) Existing shed which projects closer to the road than the house – on a corner lot in a **(CL)** zone at 323 Butternut Drive **(80-3-1)**
4. **THOMAS BAILEY (02-73)** – Request for 12' Rear Yard Setback to construct a deck and addition in an **(R-4)** Zone at 47 Knox Drive **(6-5-31)**
5. **ROUTE 32 N.W. REALTY LLC. (03-01)** Request for :

FREESTANDING SIGN:

Request for 145 sq. ft for freestanding sign

TWO WALL SIGNS:

Sign #1 - Request for 6 inch height for wall sign

Sign #2 - Request for additional 3 ft X 7 ft. wall sign

All in **(C)** Zone or Rt. 32 **(35-1-102.1)**

6. **FRANCO FIDANZA (PLANET WINGS) (03-03)** Request for 146 sq. ft. and 3' Height for freestanding sign; Request for 3.5 ft X 12 ft for wall signs on Windsor Highway in a **(C)** zone **(45-1-40.21)**

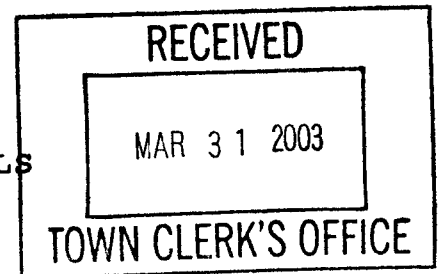
Myra (845) 563-4615

February 24, 2003

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

FEBRUARY 24, 2003



MEMBERS PRESENT: LAWRENCE TORLEY, CHAIRMAN
MICHAEL KANE (ARRIVING LATE)
LEN MCDONALD (ARRIVING LATE)
STEPHEN RIVERA

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL REISS

MR. TORLEY: Ladies and gentlemen, we don't as of yet have a quorum, we're going to begin the meeting with our preliminary meetings. We can do this because state law requires the zoning board conduct all of its hearings after, all of its decisions after public hearing. These preliminary meetings are not required by law. We hold them in this town so that those of you who are applying, this is probably the only time that in your lives you're going to do it, have some idea what the public hearing will be like, have a feeling of what kind of questions will be asked, what kind of information we'll need. So this is a way so both of us will get information, neither side gets surprised at the public hearing so I'm going to start with that at the moment.

PRELIMINARY MEETINGS:

MAKAN HOMES (03-09)

Mr. Sean D. Purdy, Project Manager of Makan Exports, Inc., appeared before the board for this proposal.

MR. TORLEY: Request for 51,543 sq. ft. minimum lot area, 5 ft. front yard setback and 10 ft. 6 inch rear yard setback to construct a single-family house in an R-3 zone at 200 Riley Road.

MR. PURDY: Good evening board members, Miss Mason, how are you doing this evening. The property was purchased in January by Makan Land Development. My name is Sean Purdy, I'm the project manager for Makan Land Development, the property was purchased at a tax sale from the County of Orange. The property is pre-existing, non-conforming, Makan Land Development has not taken any steps to alter the boundaries of the property, other than that which was purchased from the county. The dimensions that we have and I believe that you have a map in front of you you will see has a very long piece heading south and it widens out as it goes north, it abuts the New York State Thruway on the northerly side, Riley Road on the western side, I'm sorry, Thruway on the eastern side, Riley Road on the westerly. It's zoned residential, 80,000 square foot piece of property and you have the plan prepared by Gary Zimmerman which indicates where the building envelope of the house could be provided that the zoning board favorably made a determination to grant the variance as required. The surrounding properties are residential, except for the New York State Thruway and approximately a quarter of the mile down the road there's an Orange County water building.

MR. TORLEY: This is a non-conforming lot?

MR. PURDY: That's correct.

MR. TORLEY: Mike, when did they go to 80,000 square feet?

MR. BABCOCK: About a year ago.

MR. TORLEY: But prior to that, it was 40,000 square feet, was it not?

MR. BABCOCK: That's correct.

MR. TORLEY: Even prior to that, this would have been a non-conforming lot?

MR. BABCOCK: That's correct, that's why we used the larger numbers if it met the criteria of the zoning a year ago.

MR. TORLEY: So even prior to the recent changing of the zoning code, this would be less than 75 percent of the required area?

MR. PURDY: That's correct.

MR. TORLEY: Back then. By law, you're entitled to pursue to a public hearing. And in general, what we would do with a quorum we'd have a motion to entitle you but you're basically allowed to go there anyway but when we come to a public hearing and me personally I would like to have a lot more information why this lot should be built on anyway, you got this at a tax sale from somebody else who decided it was not worth trying to build on. Before the zoning code changed, it was still well below the minimum lot size. Now with the change in zoning code, it's required 80,000 square feet and you're providing 28,000 square feet in a tremendously odd-shaped lot. And there's no way any kind of a house could fit within the legal setback lines.

MR. PURDY: That's correct, we'd need a variance on two of the setbacks.

MR. TORLEY: So you're asking for some very substantial variances on a very odd shaped lot and very substandard lot, so if you proceed to a public hearing, you're going to have to have I would expect some very good defense as to why this lot should be built on.

MR. PURDY: What type of information in particular

would you be looking for?

MR. TORLEY: Just as I said why is this lot buildable when it's substandard in all aspects really. It's a self-created hardship since you bought it from a tax sale knowing that it was not, that the zoning changed and it was conforming now not conforming, it hasn't been conforming for a very long time. Steve, do you have anything you want to bring up?

MR. RIVERA: It's a wooded lot?

MR. PURDY: Yes.

MR. RIVERA: You're chopping down trees I assume?

MR. PURDY: We would have to in order to fit the structure.

MR. TORLEY: Steve, you're asking about the trees and drainage, et cetera?

MR. RIVERA: Right.

MR. TORLEY: One of our other questions is if you were granted the variance for this house and you constructed it, would you be changing any of the drainage patterns? Are you building over any water or sewer easements?

MR. RIVERA: Creating any water hazards, runoffs?

MR. PURDY: You'd be looking for an engineering report to address those issues?

MR. TORLEY: It need not be that formal but indications would be useful, particularly in a lot that looks like this, I would not necessarily require a formal engineering study, but I'd like some information on it.

MR. RIVERA: It's a substandard lot that probably would help.

MR. TORLEY: Some history of the lot might be appropriate, as well as to whether it was ever designated to be as a residential lot or whether just a

left over piece from a condemnation in which case the state may have already compensated the prior owner. This is just a piece they didn't want.

MR. PURDY: So a narrative title report?

MR. TORLEY: That would be helpful to me at least.

MR. PURDY: Are you requiring this information before scheduling a public hearing?

MR. TORLEY: No, no, at the public hearing, at the public hearing we may also, we're going to have to fill in some of the absent members on this at the public hearing as well so there may be some extended questioning on that.

MR. PURDY: So if I could submit this information prior to the public hearing so--

MR. TORLEY: That would not necessarily be of much help, it's convenient but if it's not terribly convenient for you, it doesn't matter that much. We have never acted against a person because they didn't send the stuff in ahead of time. Come into the public hearing with your information, that's your case.

MR. PURDY: Very good.

MR. TORLEY: We can't take a vote to schedule for public hearing because we don't have a quorum, you can see Myra tomorrow to get your paperwork.

MR. PURDY: Thank you very much.

JOHN RINALDI (03-11)

MR. TORLEY: Request for interpretation of residence as a single-family with two kitchens in an R-4 zone at 322 Linden Avenue.

Mr. John Rinaldi appeared before the board for this proposal.

(Whereupon, Mr. Kane and Mr. McDonald entered the room.)

MR. TORLEY: Gentlemen, what we did since we had the audience here and I wasn't sure, I was worried about you guys being stuck in ice or God forbid an accident, so since preliminary meetings are not required by state law, we went ahead and started that even in the absence of a quorum, so we have done the first preliminary which is Makan Homes and take a look at the package. We're just now starting the second preliminary.

MR. RINALDI: The problem is the building inspector has indicated that I have a kitchen in my basement or has asked me to get an interpretation as to whether or not we have a kitchen and submitted some photographs. The house was built, it's a raised ranch, it was built approximately 12 years ago and the original plans called for plumbing, sink, fixtures in the downstairs basement area as well as the bathroom for the downstairs. About three or four years ago, we put some cabinetry in because we needed additional storage and we put a utility sink down there, we have absolutely no cooking facilities downstairs, there's no place for a stove, there's no electrical service for a stove, no gas service for a stove. We basically use the downstairs as our family room. We have a swimming pool out in the back and the refrigerator and sink provide us access in the summertime to get a beer, have some food, the kids watch T.V. downstairs, use the table and chairs for that. We have a doggie door so the dog can go in and out there's no separation from the downstairs from the upstairs other than the one door, but we basically use the whole house, it's never been used as an apartment in any way whatsoever and other than the fact that I have a sink and refrigerator and cabinets

that we store stuff in and use it's a family room, that's the only way we're using this property.

MR. KANE: You don't have any kind of separate electric meters or anything like that?

MR. RINALDI: Absolutely not.

MR. KANE: Your intention is to always use it as a single-family home?

MR. RINALDI: Exactly.

MR. KANE: Just for the record, we like to get that on the record so we don't have any illegal two-family homes.

MR. TORLEY: The reason we're doing this is we found there have been owners who have a one family and illegally convert to a two-family house and the neighbors generally are properly upset about this. So when we find a situation like this, we try to resolve it in this manner so that it's clear to everyone that it is a one-family house, by asking for this interpretation, it fixes it and you don't have to worry about it again. The next person that buys your house doesn't have to worry about it.

MR. KANE: And you have legally put it on record that it's going to be used as a one-family home.

MR. RINALDI: It always has been.

MR. TORLEY: That's been the intent of almost everyone that's been here, they just happen to have a summer kitchen or wet bar or whatever but we're just making sure that the town isn't overrun by illegal two family or multi-family houses.

MR. KANE: Accept a motion?

MR. TORLEY: If no one has any other questions, yes.

MR. KANE: I move we set up Mr. Rinaldi for an interpretation on his requested interpretation at 322

Linden Avenue.

MR. MC DONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

MR. KANE: We have to do everything via public hearing, so what they do in New Windsor which is kind of different than other towns, they use a preliminary hearing to get an idea of what you want to do, therefore, you can bring us what we need to make a good decision. Other towns do everything, you walk in whether you're ready or not, they make a decision, sometimes that's not right so--

MR. TORLEY: All right, so we're giving you the paperwork.

MR. RINALDI: When would we get the public hearing?

MS. MASON: You don't have to do anything until you get a phone call from the assessor's office.

MR. RINALDI: Because we have a closing on the 28th of March and I was concerned about that.

MS. MASON: I'll try to move it along tomorrow.

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ACCEPTANCE OF MINUTES DATED 2/10/03

MR. TORLEY: Gentlemen, motion on the minutes?

MR. KANE: I move we accept the minutes of February 10, 2003 as written.

MR. MC DONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

PUBLIC HEARINGS:

PAUL AND LUANN DECKER (03-06)

MR. TORLEY: Request for variance of Section 48-14(A)(4) existing shed which projects closer to the road than the house on a corner lot in a CL zone at 323 Butternut Drive.

Mr. Paul Decker appeared before the board for this proposal.

MR. TORLEY: Is there anyone in the audience who wishes to speak on this matter? Hearing none, we'll please note that for the record.

MR. BABCOCK: Mr. Chairman, there's two variances that they're seeking, the second one doesn't appear on the agenda, one's for a shed and one's for a two story addition and entranceway. My fault, they were stuck together, there's two separate denials.

MR. MC DONALD: I will recuse myself on this one.

MR. TORLEY: Note that, I thank you for taking the care to recuse yourself in this matter. This board has always been very good about that and we're all proud of the integrity with which we maintain it. Sir?

MR. DECKER: Yes, I'm here to seek the variance for the existing shed that was placed in my back yard on a gravel base approximately 18 months ago, due to the pie-shaped rear yard that tapers to a smaller cross-sectional area, requesting refinancing it was noted that since the residence was picked up 40 feet from the I guess easement line here 52 feet from the road, the shed comes in at 32 feet. So we're requesting relief for that back space from the roadway.

MR. KANE: The property you have I see it's a corner property?

MR. DECKER: Correct.

MR. KANE: And that means you have technically two

front yards. If you were on a regular lot, you would not be here, is that correct?

MR. DECKER: That's correct.

MR. KANE: Did you create any water hazards or runoffs in the building of this?

MR. DECKER: No.

MR. KANE: The shed similar in size and construction as to other sheds in the neighborhood?

MR. DECKER: Yes.

MR. KANE: Any complaints formally or informally about the shed?

MR. DECKER: No.

MR. TORLEY: Water, sewer easements, anything like that? It's not being built on any water or sewer easements?

MR. DECKER: No.

MR. KANE: No cutting down of any trees?

MR. DECKER: No.

MR. KANE: Doesn't drastically change the neighborhood, correct?

MR. DECKER: No, it doesn't.

MR. KANE: Obviously moving it would be a hardship and you would require a variance in any case because you're on the side?

MR. DECKER: Yes, and as you move closer to the residence to try to get within that small window, there's an elevation on the rear yard that would you have to create a rather large retaining wall to try to keep it level.

MR. KANE: So this is the safest place on your property for it?

MR. DECKER: Yes.

MR. TORLEY: The second part of the variance request is for the two story addition. Gentlemen, we don't seem to have the copy of the actual denial, but if you look at your package, you'll see a sketch map of the property.

MR. BABCOCK: Did you come in two different times?

MR. DECKER: No, just for the preliminary two weeks ago.

MR. BABCOCK: Are you coming back for the addition?

MR. DECKER: I know we haven't had any discussions with the board on the addition as of yet.

MR. TORLEY: In other words--

MR. BABCOCK: I think he came in, I think we were supposed to do it, should we have done it last time? Did we have both of them last time? I don't know.

MR. DECKER: Yeah, the actual addition for the house was put in same time as the shed. I haven't heard anything on the house addition as of yet.

MR. TORLEY: Did the notice that went out reflect this as well.

MR. BABCOCK: I don't think so, it's just the shed.

MR. TORLEY: Without that, we can't legally take action on it, as I recall, am I correct on that?

MR. KRIEGER: Correct.

MR. KANE: Can we table this until the notice goes out and keep it under that portion of the thing or would it have to be something completely new and different?

MR. TORLEY: I don't know, I would like to do it that way, I'm not sure if we can.

MR. KRIEGER: No, you can't table it because you can't.

MR. BABCOCK: Well, I think what we should do is at least give him a preliminary on the addition tonight and then set up for a public hearing on that.

MR. TORLEY: Now, two story addition you want to put up first. Gentlemen, if you have no other questions as to, there's no one in the audience who indicated their desire to speak, I'll open and close the public hearing. Do you have any other questions that you have on this variance request for the shed? That's all we're talking about right now.

MR. KANE: No. Mr. Chairman, accept a motion?

MR. TORLEY: Yes.

MR. KANE: I move we approve the request for a variance at 323 Butternut Drive as written.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	ABSTAIN
MR. KANE	AYE
MR. TORLEY	AYE

MR. TORLEY: Now we're shifting to a preliminary meeting regarding this addition.

MR. KANE: Same basic questions come up, how long has the addition been there, about 18 months you said same time as the shed?

MR. DECKER: No, the addition has not yet been constructed.

MR. BABCOCK: It's proposed, yeah.

MR. KANE: For the preliminary, I mean, for the public hearing please bring some pictures in so we can see the area where it's going to go. Are you going to create any water hazards or runoffs in the building of the addition?

MR. DECKER: No.

MR. KANE: Cut down any trees?

MR. DECKER: No.

MR. KANE: How far is the addition going straight down on the ground or up off the ground? Is it going to be high?

MR. DECKER: One story over the family room and the rear section which should be the the variance request would be two story but the lot tapers to the rear.

MR. KANE: And in the variance what are we looking for?

MR. BABCOCK: Larry's got my paperwork.

MR. RIVERA: There's a photograph.

MR. BABCOCK: We have a photograph in the shed one also.

MR. TORLEY: Basically, it's a front yard variance that he's looking for.

MR. DECKER: Based on my understanding.

MR. KANE: He's going to need 21 feet.

MR. TORLEY: So it's a front yard variance request.

MR. DECKER: Measure from the corner of the house to the curb. Right now, it's 52 feet six inches.

MR. TORLEY: It's not the curb.

MR. KANE: They're both front yards so he's going to need 5 from one and 21 feet from the other, since he's

on the corner lot, it makes both front yards. What size is the deck that you're putting up, sir?

MR. TORLEY: Not a deck.

MR. KANE: The addition.

MR. DECKER: Fifteen foot that way starts to merge into the area we're requesting the variance and eight foot in the back but that wouldn't impede on any area that we'd request a variance, just a side yard.

MR. TORLEY: It's not a side yard, you have two front yards because of the way the road curves around.

MR. KANE: And the addition of this would not change, drastically change the neighborhood and the look of the homes in that particular neighborhood?

MR. DECKER: No, actually, it was one of two houses that were constructed originally from the original developer, they're the smallest versions of the houses in the subdivision.

MR. KANE: Yeah, I know. I have no further questions, Mr. Chairman.

MR. TORLEY: Gentlemen, any other questions?

MR. RIVERA: No.

MR. KANE: Accept a motion?

MR. TORLEY: Yes, sir.

MR. KANE: Move we set up Mr. Decker for a public hearing on his requested variance at 323 Butternut Drive.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE

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MR. KANE
MR. TORLEY

AYE
AYE

THOMAS BAILEY (02-73)

MR. TORLEY: Request for 12' rear yard setback to construct a deck and addition in an R-4 zone at 47 Knox Drive.

Mrs. Bailey appeared before the board for this proposal.

MRS. BAILEY: Mr. Bailey is unable to make it, he's disabled. I'm his wife.

MR. TORLEY: Yes, ma'am, so what's the problem?

MRS. BAILEY: Well, we're seeking a variance to build an addition to our single family home to accommodate my disabled husband to have him on one level.

MR. TORLEY: The new deck then is to permit an ill person or handicapped person better access to and from his house?

MRS. BAILEY: Yes.

MR. KANE: You won't be creating any water hazards, runoffs in the building of this?

MRS. BAILEY: No.

MR. KANE: Cutting down of trees?

MRS. BAILEY: No.

MR. KANE: Do you feel that the addition and the deck would drastically change the neighborhood?

MRS. BAILEY: I don't think so.

MR. TORLEY: Mike, I'm looking at this, it's looking for a rear yard, 12 foot rear yard setback, the sketch I'm looking at applies to side, not rear yard.

MR. KANE: From the one corner, Larry, you'll notice it's 25.

MR. TORLEY: The existing structure blocked it out, okay, it blocked out part of the structure. Now I've got it. There's a new addition, two story addition and a new deck so we're looking for.

MR. KANE: Just a 12 foot setback because the 12 feet on the addition covers the back, correct?

MR. BABCOCK: That's correct.

MR. TORLEY: My mistake.

MR. BABCOCK: The rear yard is existing, Mr. Chairman, they're staying even with the back of the house, excuse me, I'm sorry, that's not correct.

MR. TORLEY: Side yard.

MR. BABCOCK: Right.

MR. TORLEY: The text over the existing wood frame dwelling sort of the blocked out the spacing and you miss it. Again, if there's anyone in the audience who wishes to speak on this matter? If not, I'm going to open and close the public hearing and ask how many letters were sent out.

MS. MASON: On the third day of February, 64 envelopes were mailed out.

MR. TORLEY: Thank you.

MR. BABCOCK: Just one correction here, the side yard, the 12 foot the deck is exactly even with the existing house, what they're here for tonight is a rear yard, that's a new two story addition in the back and the deck so it's a rear yard variance of 12 feet.

MR. TORLEY: I was incorrect when I was looking at the map.

MR. KANE: Yeah, that's what's in here.

MR. TORLEY: Gentlemen, questions?

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MR. RIVERA: No.

MR. MC DONALD: Accept a motion?

MR. TORLEY: Yes.

MR. MC DONALD: Make a motion we grant the request for 12 foot rear yard setback to Mr. Thomas Bailey.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

ROUTE 32 N.W. REALTY LLC (03-01)

Mr. Gregory Shaw of Shaw Engineering appeared before the board for this proposal.

MR. TORLEY: Request for 145 sq. ft. freestanding sign and two wall signs, sign #1, request for 6 inch height and sign #2, request for additional 3 ft. x 7 ft. wall sign. So what's the problem?

MR. SHAW: For the record, my name is Greg Shaw and I'm representing--

MR. TORLEY: Anyone wishing to speak on this matter? Seeing no one, please so note.

MR. SHAW: Again, my name is Greg Shaw from Shaw Engineering and I'm representing Headlee Management Corporation tonight the construction of a new Arby's Restaurant on Windsor Highway. We have an application before this board for for three variances, one deals with the freestanding sign and according to the zoning ordinance, we're allowed to provide a total of all faces of 64 square feet and we're asking for a variance of 145 square feet above and beyond that. That may sound like a lot, it really is not. If you take a look at the handout I gave you, the bulk of the signage is in the brickwork of the structure and really not with the sign itself. What we're providing in each direction is a three foot by six foot reader board and then simply the Arby's hat with the letters Arby's in a horizontal fashion. So, again, don't let the numbers scare you, it's not a very big sign. The second variance that we're requesting is for to increase the height of a facade sign. Your zoning ordinance allows a sign per business 2 1/2 feet by 10 feet, we're asking that the board consider our request to go to 3 feet which would be six inches more than that permitted by your zoning. I may point out that the length of that sign is only 7 feet long, so really what we're asking for is a 21 square foot sign in area and your zoning ordinance allows just 2 1/2 by 10, 25 square feet. So we're asking for less in area than what normally would be required. Then the third variance would be for a second facade sign, obviously, one would be facing in a

northerly direction, the other would be facing in a southerly direction and again, that also would be 3 feet by 7 feet again with the three foot dimension exceeding your zoning ordinance.

MR. KANE: How far off the road is the building going to be?

MR. SHAW: From the right-of-way line 97 feet and from the edge of pavement probably about another 20.

MR. KANE: Where are the signs going to go?

MR. SHAW: On the front face over here and over here.

MR. KANE: And the freestanding sign?

MR. SHAW: Right there.

MR. KANE: Thank you.

MR. TORLEY: I see by the notation in the photograph you're going to put one sign on each of two sides of the building and one in the front?

MR. SHAW: Correct.

MR. MC DONALD: You had that at the preliminary, right?

MR. SHAW: Yes.

MR. KANE: Freestanding sign, is that going to be illuminated?

MR. SHAW: The freestanding sign, no, that's your freestanding sign, it's going to be ground mounted.

MR. KANE: And the signs, facade signs?

MR. SHAW: Just going to be these words, Arby's, okay, on the sides of the building, not the front.

MR. KANE: Any illumination on those? Internal?

MR. SHAW: Yes.

MR. KANE: No flashing?

MR. SHAW: No.

MR. TORLEY: Front sign is also going to be illuminated, internally illuminated?

MR. SHAW: Yes.

MR. TORLEY: Again, no flashing lights?

MR. KRIEGER: Steady illumination, no neon, no flashing?

MR. SHAW: Right.

MR. TORLEY: And the situation of the sign is such regarding in relationship to the road that there's no obstruction of drivers' line of sight?

MR. SHAW: No, in fact, no, the right-of-way is a substantial distance from the edge of pavement. We have to be within the outside of the right-of-way so we're significantly back from the edge of pavement where it would not block any views.

MR. TORLEY: I must say it's a very nice looking freestanding sign, no little cement pad with a stick of wood on it, it's a nice brick face.

MR. SHAW: Thank you.

MR. TORLEY: Gentlemen, do you want to take the variance requests separately or together?

MR. KANE: We can do it together.

MR. TORLEY: As noting that there's no one in the audience who wishes to discuss this matter so we're opening and closing to the public. Back to you gentlemen, any other questions you have?

MR. KANE: Accept a motion?

MR. TORLEY: Yes, yes.

MR. KANE: I move we approve the request for 145 square additional feet for a freestanding sign, request for six inch height variance on two wall signs and a request for an additional wall sign that has that height variance.

MR. SHAW: Correct.

MR. MC DONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

FRANCO FIDANZA (PLANET WINGS) (03-03)

MR. TORLEY: Request for 146 sq. ft. and 3' height for freestanding sign; request for 3.5 ft. x 12 ft. for wall signs on Windsor Highway in a C zone.

Mr. Carmine Rotundo and Mr. Franco Fidanza before the board for this proposal.

MR. TORLEY: Before we begin, is there anyone in the audience who wishes to speak on this matter? Let the record show there's none. Sir?

MR. ROTUNDO: I'm Carmine from Light Bright Signs. I'm representing Mr. Fidanza.

MR. TORLEY: Do we have a proxy on this? If you're not the applicant, theoretically, we need a proxy to show that you're speaking on his behalf.

MR. ROTUNDO: The applicant's here.

MR. TORLEY: Problem solved.

MR. KANE: Tell us what you want to do.

MR. ROTUNDO: We're basically trying to get a variance for the freestanding sign. We have an existing freestanding sign of 312 square feet and we want to propose a freestanding sign of 210 square feet so we're actually going to make it smaller but it still doesn't apply to your code. So we need a variance for that. The side of the building we're under 25 square feet but I guess it's written in the paperwork that we need a variance for it but I don't see why.

MR. KANE: Let's stay with the freestanding sign if we can. You have a difference on the height on that?

MR. ROTUNDO: The height going to be the same.

MR. BABCOCK: Well, existing height is the same.

MR. KANE: Sign's already there, we're not adding 3 feet, we're making what's there legal.

MR. BABCOCK: Yes.

MR. TORLEY: And that sign is internally lit?

MR. ROTUNDO: Yes.

MR. TORLEY: No flashing neon?

MR. ROTUNDO: No.

MR. KANE: Any complaints about the sign?

MR. ROTUNDO: No. I gave you guys a colored rendering of it last meeting.

MR. KANE: At the public hearing, you kind of repeat everything for this meeting.

MR. MC DONALD: No sight distance being blocked?

MR. ROTUNDO: No more than what's here, I don't think so.

MR. FIDANZA: The other property sits lower so it drops.

MR. KANE: So basically on the freestanding sign where you're shrinking the overall size of it and keeping the height for what's existing there right now?

MR. ROTUNDO: Yes.

MR. KANE: As far as the wall sign, you're looking for a 3 1/2 foot by 12, are these existing signs also replacing existing signs?

MR. ROTUNDO: No.

MR. TORLEY: I'm a little confused on signs again for the record these wall signs are, is it just your logo or text as well?

MR. ROTUNDO: One side of the building has just the logo which is this one and the front of the building we

want this, this is--

MR. FIDANZA: That's our standard logo with the lettering.

MR. TORLEY: And this sign we're now referring to a sign with the Planet Wings text around the logo, now the dimensions of that sign are?

MR. ROTUNDO: Well, the letters are 16 inches high and the logo is 6 foot high by 43 inches.

MR. BABCOCK: We made it rectangular and we're saying the sign is 6 foot high and 22 feet long, we're counting the whole shaded area of that paper, that green shade.

MR. KANE: But what you're doing is you're counting from the letters all the way up?

MR. BABCOCK: Right.

MR. TORLEY: The question then is the actual, how far is it from the beginning of the P to the end of the S?

MR. ROTUNDO: Well, we've got 6 feet and 81 inches, that's 13 feet and 4, 19 feet.

MR. BABCOCK: We calculated 22 for some reason so for some reason that's how we got the number 22.

MR. TORLEY: Spacing around.

MR. KANE: How far off the roadway is this sign going to be?

MR. ROTUNDO: On a store front, I don't know how.

MR. FIDANZA: On the building front probably 50 feet off, 45 feet.

MR. TORLEY: Is there a smaller sized sign that the corporation has?

MR. FIDANZA: That's our channel letters, I mean, it's

16 inches are already shrunk.

MR. ROTUNDO: Yeah, that's only this high.

MR. FIDANZA: Cause you've got the actual box.

MR. ROTUNDO: Technically, he's counting it as a rectangle but it's a lot of empty space there.

MR. KANE: What we're saying the emblem itself is making the sign over?

MR. BABCOCK: Yes, if he was to take that emblem out and scrunched Planet Wings together, he would probably meet the code, would just barely exceed it.

MR. ROTUNDO: This is only 24 extra square feet but it's making it seem like it's--

MR. MC DONALD: Actual logo is 6 by 43?

MR. BABCOCK: That's right.

MR. RIVERA: Entirely illuminated?

MR. ROTUNDO: Internally illuminated, it's a channel letter.

MR. KANE: Steady illumination?

MR. ROTUNDO: Yeah, it's got neon inside, no flashing.

MR. TORLEY: Other wall sign is simply the logo and that's going to be where?

MR. ROTUNDO: According to the code, you're allowed 24 square feet.

MR. TORLEY: You're allowed one wall sign.

MR. KANE: You're going for an additional sign.

MR. ROTUNDO: I thought the second sign you can have.

MR. BABCOCK: You have to keep in mind it's not square

footage, you're allowed a 2 1/2 foot high by 10 into the sign, can't multiply that and come out.

MR. ROTUNDO: We're going for the other variance.

MR. KANE: Going for an additional sign and what's the size of the additional sign that you're planning to put on?

MR. ROTUNDO: 43 inches by 6 foot so 24 square feet.

MR. BABCOCK: Well, he's allowed, if he was allowed the additional sign he would be allowed a 2 1/2 by 10, we're saying just for round figures it's 6 foot by 4 foot so he needs a 3 1/2 by 6 foot variance.

MR. KANE: And an additional.

MR. BABCOCK: Plus that additional sign and it's just the logo.

MR. KANE: Let me square this away, we need 146 square feet for the freestanding?

MR. BABCOCK: Yes.

MR. KANE: And a three foot height and that's an existing height and for the front logo we need a 3.5 foot by 12 foot variance?

MR. BABCOCK: That's correct.

MR. KANE: That's for the allowable sign?

MR. BABCOCK: That's correct.

MR. KANE: We need a variance for an additional wall sign?

MR. BABCOCK: That's correct.

MR. KANE: We need a variance for a 3.5 by 6 area on the additional sign?

MR. BABCOCK: Correct.

MR. TORLEY: Which building face is the logo going to be on?

MR. ROTUNDO: Facing towards Route 32.

MR. FIDANZA: Just the logo that's coming down heading towards Newburgh on the right by the paint store.

MR. ROTUNDO: Just the building is set up for something there right in the building.

MR. TORLEY: Internally lit sign, no neon, no flashing?

MR. ROTUNDO: Nothing flashing.

MR. TORLEY: Again, no one in the audience requesting to speak on this so I'll open and close it to the public, turn it back over to you gentlemen. Any other questions?

MR. RIVERA: No.

MR. KANE: Mr. Chairman, I move that we approve the following requested variances for Planet Wings on Windsor Highway, they are as follows, 146 square feet and a three foot height variance on the freestanding sign, a 3.5 foot by 12 foot variance on the front wall sign, a variance for an additional wall sign and a 3.5 by 6 foot size variance for that additional wall sign.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

MC DERMOTT

Mr. Robert Biagini appeared before the board for this proposal.

MR. TORLEY: We tabled the Biagini variance request, however, it's not on the agenda because there are two different ways of expressing when it was going to be held. Mr. Kane at the last meeting said we're tabling it to the next meeting and then we asked Myra for the date and Myra gave us March 10 because that was the next available slot so we wanted to be ready in case you want to do it tonight or March 10. Is there anyone here for it? We opened and closed the public hearing already.

MR. KANE: My intention was for the next meeting as I stated. Andy, any problem with that one way or the other with putting a date down and compared to what I said?

MR. KRIEGER: I don't think so.

MR. TORLEY: Again, since we had opened and closed the public hearing so we're not accepting anymore public comment.

MR. KANE: Make a motion that we remove that item from the table and finish the discussion this evening.

MR. MC DONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

MR. TORLEY: In my mind, I wanted the extra time to look at this, its Section 4826 B which is talking about non-conforming lots in common ownership and Myra has handed me a copy of that relevant section of the code, she's copied it here. Now, the problem arises because we had two non-conforming lots held in common ownership

and as you can see by the first attachment on Part B, I need not read it all into the record, but basically says two or more non-conforming subdivision lots not in separate ownership shall have three years from the date of final approval to obtain a building permit under the provisions of 46-26 A. Basically, you've got three years to do something with it after you buy it. The purpose as I understand this law and I yield to others if you have a different understanding was that the Town Board had wanted to ensure that if there's a series of non-conforming lots bought in one chunk, you could not make a conforming lot, you could not then go back and recreate non-conforming lots from that. I'm asking our legal opinion if I'm interpreting that in a reasonable manner?

MR. KRIEGER: Yes, you are.

MR. TORLEY: The question then arises whether A, we would have the right power to vary that in any case and second, whether that whole issue B has been rendered moot by our court decisions. I don't remember any that address this particularly, there were some court decisions regarding not pre-existing non-conforming lots but I'm not sure if they're relevant to this particular part of the code. Now, the other part that that I have asked Myra to put on was the non-conforming lots that were permitted to be used in any case and it is my recollection that this lot would not meet those criteria given what the gentleman intended to do with it.

MR. BABCOCK: That's correct.

MR. TORLEY: It was the Town Board's stated opinion at the end of that section actually Part F that it's the finding of the Town Board that the development of non-conforming lots not meeting the above criteria described in Section E will meet the proper and orderly development and general welfare of the community. So we have those two issues to address. I'm asking for your input on this matter. I really would appreciate it what you guys think on this. While they're considering it, let me ask you a couple questions. The house you're going to construct could leaving aside

non-conforming adjoining lots for the moment, just the variances you requested, the house you would like to construct in that architecturally you could fit a house on the property footprint for the lot on the lot or not.

MR. BIAGINI: Yes.

MR. TORLEY: A house could be made to fit in the buildable footprint?

MR. BIAGINI: Right but it wouldn't be desirable.

MR. TORLEY: The house you wish to build is going to be what?

MR. BIAGINI: 36 x 28.

MR. TORLEY: And that's what commonly termed a bi-level?

MR. BIAGINI: Colonial.

MR. TORLEY: So the house would not then be designed with an elevated rear deck in mind?

MR. BIAGINI: Right.

MR. TORLEY: Cause there have been occasions in the past where there have been houses built where the rear of the house is at the rear of the permissible footprint and it's a bi-level with the sliding glass doors onto nothing, so the owner would have to build a legal deck for safety reasons but that's not the case with the house you're going to construct here?

MR. BIAGINI: Yes.

MR. BABCOCK: Yes, he's proposing a deck which makes the rear yard, it's part of the application, makes his rear yard variance much larger.

MR. KANE: And it's a small deck?

MR. BIAGINI: Right.

MR. MC DONALD: 10 x 12.

MR. BIAGINI: Yes.

MR. KANE: Michael, if this variance is granted, does that make the additional, the existing house non-conforming on the existing lot that they have right now?

MR. BIAGINI: It's two separate parcels.

MR. TORLEY: No, that's the question we're going to assume for your argument that we're considering that there are two separate lots there, right?

MR. BIAGINI: Yes.

MR. TORLEY: So if they went to go and sell the house, would they be in here looking for a variance on that, on the existing home that's on there?

MR. BABCOCK: No, cause there's a line between, they're two separate lots just as if you think about it as if two different parties own the lots.

MR. TORLEY: So the existing house is okay with the code?

MR. BABCOCK: Yes, the only reason they're here is because the same owner of the lots.

MR. KANE: Have, to your knowledge, has taxes been paid separately on both lots all these years?

MR. BIAGINI: Yes.

MR. TORLEY: You're the owners?

MR. MC DERMOTT: Yes.

MR. TORLEY: The problem I confess that I have is that section of the code requiring non-conforming lots and you understand why they may have put that in the code, you have to make sure whether that applies. If it does

apply to you, are we permitted in law to vary that.

MR. MC DERMOTT: I understand.

MR. TORLEY: Just want to make sure no matter what happens your house is legal, want to make sure that you're not going to be bit by that.

MR. MC DERMOTT: Right.

MR. KANE: The only problem I have, Larry, with it is that I have a problem with people paying taxes on a piece of property for X number of years and then not being able to do anything with that and that's, you know, I understand what their intent was as far as that but I think that actually is my own personal opinion is that when they purchased the separate lots at the same time to me it should have been the Town's responsibility to say that they're both non-conforming lots and they should have been joined at that time one tax payment made and that's my own personal opinion on it.

MR. BABCOCK: Applicant's saying that they have been paying taxes since 1987 as a buildable lot.

MR. KRIEGER: They maintain they are not considered attached because they maintain their separate existence throughout.

MR. KANE: If they maintained that.

MR. KRIEGER: Only way the lots can become attached is if there's a Supreme Court finding that they're attached. Other than that, they're not attached so we have the criteria that says they have to be attached and in common ownership, that's a two step requirement so even if they meet one of the requirements, they won't necessarily meet the other one.

MR. TORLEY: I'm a little confused here, what you're saying is even though the lots are physically adjacent, contiguous, they're considered two lots despite Part B.

MR. KRIEGER: Yes, and that I think is the infirmity of

B that you focused on later, they don't automatically, lots which are contiguous which happen to be owned by the same owner assuming that's the case.

MR. BABCOCK: That's the case.

MR. KRIEGER: Even if they were, the fact that they're owned by the same owner does not automatically make them one lot, it's not it's like 2 amoebas next to each other which morph into one. The only way that they could be made one lot together that's part of the criteria but there are various criteria that the Supreme Court would apply in making that finding in addition to the common ownership, the common ownership alone does not automatically do it.

MR. TORLEY: Thank you.

MR. KRIEGER: Otherwise for I think very obvious reasons because otherwise, nobody could own two contiguous parcels and we would have a, then we would have a law which restricts ownership of the property, you know, to say to a person you can't own that piece of property cause it happens to be next to a piece of property you already own, it's basically considered unconstitutional to say to somebody you cannot own a particular piece of property.

MR. TORLEY: So I'll yield to our professional opinion that the Part B really is not relevant to this lot.

MR. KRIEGER: Correct.

MR. TORLEY: Now then we're left with the Part E non-conforming residential lot and whether this as a non-conforming lot forgetting the house intended to be placed on it but the lot itself, the land, that land would fit the criteria for the non-conforming lot of record, is that correct?

MR. BABCOCK: Yes.

MR. TORLEY: So the problem that the applicant gets is his footprint of the house he wishes to put on that somewhat exceeds the permitted code.

MR. BABCOCK: That's correct.

MR. TORLEY: Therefore, that's why it does not meet the Part E.

MR. BABCOCK: Since he failed to meet all the criteria of a non-conforming lot by building the house bigger than what the lot would hold, we now took him out of the 5,000 square foot lot and put him into the regular R-4 zone which is 15,000 square foot lot which makes the variance look very large.

MR. BIAGINI: Only look.

MR. MC DONALD: 1,000 square foot livable floor area you've got two stories, you just use the footprint?

MR. BABCOCK: Whatever is livable.

MR. KRIEGER: When you have criteria listed and if he fails to meet any one of the eight criteria then he no longer applies, it's as if it doesn't exist anymore, it's as if he doesn't exist.

MR. TORLEY: Then F becomes relevant, does it not? It says you can build, if he met all the criteria of E, it's a non-conforming small lot but we're going to allow you to build but it says if you don't meet the criteria then F comes into play where the Town Board has made a decision.

MR. KRIEGER: The Town Board cannot, does not have the power to take from the zoning board any lawful jurisdiction that it has, it can't unilaterally decide we're going to take something off the table that the zoning board can decide that's something that the zoning board can naturally decide so while E is a statement of or F is a statement of principle, it does not strip from the zoning board the power in a particular--

MR. KANE: Right, we're a board of appeals.

MR. KRIEGER: To vary it.

MR. TORLEY: And the reason again this lot fails of E is the footprint of the house, not anything deficient in the lot itself.

MR. BABCOCK: That's correct, non-conforming lots have requirement of lot area is 5,000 square feet, this lot has 7,000 square feet.

MR. TORLEY: But it's the rear yard that fails.

MR. BABCOCK: Rear yard and the front yard, the rear yard because of the deck.

MR. TORLEY: On the front yard, did you have a chance to see whether the front of your house is it in fact going to be closer to the road than the front of the houses?

MR. BIAGINI: Same.

MR. TORLEY: Essentially the same?

MR. BIAGINI: Yes.

MR. BABCOCK: Mr. Chairman, there's a section of the code that says you don't have to have a greater front yard than the houses on either side, we didn't want him to go through that demonstration to us and higher a surveyor to do that when he's coming to the zoning board anyway so we put it in as a matter of record.

MR. TORLEY: You did the right thing, just establishing that it is in fact not going to stand out from the other houses. And the reason it impinges on the rear yard is the deck?

MR. BIAGINI: Correct.

MR. TORLEY: So basically what we're looking at all boils down to the rear yard variance for the deck?

MR. KANE: Yes.

MR. TORLEY: Gentlemen, do you have any questions after

my monologue here?

MR. RIVERA: No.

MR. TORLEY: Do I hear a motion?

MR. KANE: I guess I have the numbers, Mr. Chairman, accept a motion?

MR. TORLEY: Yes.

MR. KANE: Michael, correct me on the numbers if I'm wrong, I move that we approve the requested variance for the applicant, Mr. McDermott is the applicant for and 8,000 square foot area variance and a 30 foot lot width variance, five foot front yard variance and ten foot rear yard variance.

MR. BABCOCK: That's correct.

MR. MC DONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

MR. TORLEY: Do you want to make the notation this actually the lot itself meets the criteria of the non-conforming lot by Part E?

MR. KANE: As you stated.

MR. MC DONALD: I'll second what he said you said.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

MR. TORLEY: Motion to adjourn?

February 24, 2003

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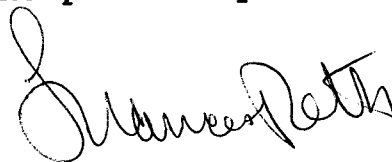
MR. KANE: So moved.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. TORLEY	AYE

Respectfully Submitted By:



Frances Roth
Stenographer

3/18/03